would make no difference; the sole, essential inquiry would be merely whether or not there was negligence in performance. Since it is the fundamental purpose of the construction of a contract to give effect to the intention of the parties, it may be said that the minority opinion seems to propound the better view. The cases, above cited, indicate that it is supported by much authority.

It was also pointed out in the dissenting opinion of the principal case that the contractor knew of the "unsettled condition of labor and the prospect of a strike" at the time the contract was made, and failed to make any disclosure thereof to the owner of the ship. C. L. K.

THE DOMICIL OF PERSONS RESIDING ABROAD UNDER CONSULAR JURISDICTION. —The question of domicil under consular jurisdiction was discussed at some length by the present writer in an article which appeared in an earlier number of this review. See 17 MICH. LAW REV. 437-455. When that article was written some much quoted dicta and the decision of the Court of Appeal in *Casdagli* v. *Casdagli,* 87 L. J. P. 73, 79, indicated that according to the English rule a domicil of choice could not be acquired under consular jurisdiction. The author ventured to criticise that extraordinary rule from the point of view of the authorities and on principle. With regard to the authorities it was suggested that what appeared to be the English rule was the outcome of an obsolete theory of immiscibility, an imperfect analogy with commercial domicil in prize law, an equally imperfect analogy with the anomalous doctrine of Anglo-Indian domicil, and the accumulated dicta of distinguished judges. On principle it was urged that the rule involved an unnecessary confusion of domicil with *lex domicilii* and that the acquisition of domicil under consular jurisdiction should be governed by the same principles which control the acquisition of domicil elsewhere. The American case of *Mather* v. *Cunningham,* 105 Me. 326, and LORD JUSTICE SCRUTTON'S dissenting opinion in the *Casdagli Case* were commended as offering a more satisfactory solution of the problem from all points of view.

It is gratifying to learn that LORD JUSTICE SCRUTTON'S dissenting opinion has been approved unanimously in the House of Lords. *Casdagli* v. *Casdagli,* 88 L. J. P. 49. Every line of authority which could be thought to lend any support to the decision rendered by the majority in the Court of Appeal seems to have been reviewed exhaustively in the House of Lords, and in every instance the authority was found insufficient or beside the point. The doctrine of immiscibility, whatever significance in general it may retain at the present day, was eliminated from the problem presented by the case. LORD FINLAY said: "It has often been pointed out that there is a presumption against the acquisition by a British subject of a domicil in such countries as China and the Ottoman Dominions, owing to the difference of law, usages, and manners. Before special provision was made in the case of foreigners resident in such countries for the application to their property of their own law of succession, for their trial on criminal charges by Courts which will command their confidence, and for the settlement of disputes between them and others of the same nationality by such Courts, the presumption

against the acquisition of a domicil in such a country might be regarded as overwhelming, unless under very special circumstances. But since special provision for the protection of foreigners in such countries has been made, the strength of the presumption against the acquisition of a domicil there is very much diminished. Egypt affords a very good illustration of this." 88 L. J. P. 49, 53. The analogy with commercial domicil in prize law was repudiated. Referring to *The Indian Chief,* LORD ATKINSON remarked that "judicial observations made in reference to this commercial domicil have been treated as applicable to civil domicil, a most misleading error." 88 L. J. P. 49, 66. The doctrine of Anglo-Indian domicil was rejected as anomalous and not in point. See 88 L. J. P. 49, 61, 66. The accumulated dicta were swept aside. See 88 L. J. P. 49, the pages cited in connection with each of the following cases: *The Indian Chief,* 54, 66, 73; *Maltass* v. *Maltass,* 54, 68; *In re Tootal's Trusts,* 54, 55, 56, 60, 61, 62, 68, 69, 73, 74; *Abd-ul-Messih* v. *Chukri Farra,* 56, 57, 58, 59, 61, 62, 63, 69, 74. Except for the case of *Tootal's Trusts,* their Lordships appear to have been unanimous in thinking that the Court of Appeal had been misled by dicta. LORD FINLAY seems to have considered *Tootal's Trusts* an authority in support of the Court of Appeal, but he thought that it was erroneous and that it ought to be overruled. VISCOUNT HALDANE, LORD DUNEDIN, LORD ATKINSON, and LORD PHILLIMORE found nothing in point in *Tootal's Trusts* except dicta which they agreed in repudiating. VISCOUNT HALDANE could not agree with the other Lords as to the precise point which the case was intended to decide, but he joined in rejecting its dicta. Just what *Tootal's Trusts* decided is no longer important since it has been repudiated in connection with the only type of case in which it could have any practical application.

The final settlement by the House of Lords of this long vexed question is equally satisfactory on principle. It has now been established in the English law that the requisites of domicil under consular jurisdiction are exactly the same as they would be anywhere else, *viz.,* residence and the *animus manendi.* Nothing of the nature of a normal relationship to the peculiar laws of the country of residence or of complete identification with the general life of the inhabitants is necessary. See 88 L. J. P. 49, 56, 61, 63, 65. LORD ATKINSON said: "I concur with SCRUTTON, L. J., in thinking that there is no test which must be satisfied for the acquisition of a domicil of choice in Egypt other than, and in addition to, those by which a similar domicil is acquired in a European country, namely, voluntary residence there plus a deliberate intention to make that residence a permanent home for an unlimited period." 88 L. J. P. 49, 73. All confusion between domicil and the *lex domicilii* has been avoided. See 88 L. J. P. 49, 56, 63, 71, 72. The distinction between these two conceptions was admirably stated by LORD FINLAY, as follows: "The position of British subjects in such a country is not ex-territorial. The domicil is acquired, and can be acquired only by residence in Egypt. The law applicable to the foreigner so residing is, by the consent of the Egyptian Government, partly Egyptian and partly English. This is the result of the Convention between the two Governments. Although the dom-

icil is Egyptian, the law applicable to persons who have acquired such a domicil varies according to the nationality of the person. The foreigner does not become domiciled as a member of the English community in Egypt, but he acquires an Egyptian domicil, because he, by his own choice, has made Egypt his permanent home, and you have then to consider by what code of law he and his estate are governed according to the law in force in Egypt. The domicil is purely territorial, and you go to the law in force in the territory to see what system of law it treats as applicable to resident foreigners, and to what Courts they are subject. 88 L. J. P. 49, 56. Finally, this position has been atained without distorting the nature of consular jurisdiction. It is not necessary to regard consular judisdiction as delegated authority; no dialectical legerdemain need be indulged in order to find sovereignty and reconcile it with realities. While the position of persons subject to consular jurisdiction is not regarded as ex-teritorial, the jurisdiction itself is ex-territorial in a very real sense. "The jurisdiction exercised by His Majesty in Egypt is indeed ex-territorial, but it is exercised with the consent of the Egyptian Government, and its jurisdiction is therefore for this purpose really part of the law of Egypt affecting foreigners there resident. The position of a British subject in Egypt is not ex-territorial; if resident there, he is subject to the law applicable to persons of his nationality. Whether that law owes its existence simply to the decree of the Government of Egypt, or to the exercise by His Majesty of the powers conferred on him by treaty, is immaterial." Per LORD FINLAY, 88 L. J. P. 49, 53; see also 51, 52, 56, 63, 71, 72.

The decision of the House of Lords in *Casdagli* v. *Casdagli* has brought the question of domicil under consular jurisdiction to a final and satisfactory settlement. *Tootal's Trusts* may be relegated to the custody of the mystagogue. Although that famous case is no longer significant as an authority, it will always be a decision of considerable historical interest because of the curious chapter in the evolution of dicta which it provoked.

E. D. D.

RAILROAD EMPLOYMENT — ADAMSON LAW — NON-APPLICATION TO SWITCH TENDER.—Primarily an enactment of a legislative body is to be carried out according to its express terms. If the terms are clear, explicit, unambiguous, the enactment is not subject to judicial interpretation and the courts cannot go beyond it to ascertain the legislative intention because the words themselves are presumed to convey the intention of the legislature. If the words and terms are free from doubt they must be given their ordinary and natural meaning although this may give to the enactment a narrower, wider, or different scope than intended by the legislature. The above principles are aptly expressed by SUTHERLAND in his work on STATUTORY CONSTRUCTION, second edition, annotated by LEWIS. On page 696 he says, "the rules of construction with which the books abound apply only where the words are of doubtful import; they are only so many lights to assist the court in arriving with more accuracy at the true interpretation of the intention." And on page 697, "courts are not at liberty to speculate upon the intentions of the legislature